IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 138 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

RABIKABEN GEORGEBHAI PILLAI - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

Appearance :

MR KIRIT J MACWAN for Petitioner No(s).: 1.

MR LR PUJARI, LD.APP for Respondent No(s).: 1.
MR MM TIRMIZI for Respondent No(s).: 2.

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date : 04/07/2005

ORAL JUDGMENT

1. Heard Mr.Macwan, learned counsel appearing for the petitioner, Mr.M.M. Tirmizi, learned counsel appearing for the respondent no.2 and Mr.L.R.

Pujari, ld.APP, appearing on behalf of the respondent-State.

2. Rule. The formal service of Rule is waived by Mr.M.M. Tirmizi on behalf of respondent no.2 and Mr.L.R. Pujari, ld.APP, on behalf of the respondent-State. The Rule is fixed forthwith on consent.

3.1 The petitioner is a lady aged about 62 to 63 years of age and she is a retired teacher and because of some disputes with her daughter-in-law, she is facing a civil litigation, a Civil Suit pending before the Civil Court at Anand.

3.2 The petitioner along with other accused persons are being now prosecuted for the offence punishable under Sections 467, 468, 471 and 420 of the Indian Penal Code, on account of a private complaint filed by Nayanaben-daughter-in-law of the present petitioner. At present the police is investigating the crime under Section 156(3) of the Code of Criminal Procedure, in compliance of the order passed by the ld.JMFC, Anand.

3.3 Apprehending arrest all the accused persons applied for advance bail u/s.438 of the Code of Criminal Procedure and got anticipatory bail vide order dated 14th July, 2005.

3.4 All the accused persons came to be arrested by the

Investigating Officer and then were enlarged, as per the order, on anticipatory bail and thereafter all the accused have been granted regular bail by the competent Court.

3.5 While enlarging the petitioner on bail, the Court imposed certain conditions and the present Revision Application is in reference to a subsequent order deleting one of the bail conditions i.e. Condition no.6 passed by the very Presiding Judge qua the present petitioner.

4. It is not a matter of dispute that while enlarging the accused persons on bail on certain conditions one of the conditions i.e. Condition no.6, imposed by the Court is that the applicant-accused shall not enter the residential area in question i.e 3, Alpesh Society, Block No.16, Padhariya, Tal.& Dist.Anand, without prior permission of the Court. The petitioner-orig.accused no.1 approached the ld.Sessions Judge praying that Condition No.6 is causing serious prejudice to her right qua the very property; so at least Condition No.6 requires to be deleted qua her. A copy of the application praying deletion of the said Condition is available on record and alternative prayer was also made by the petitioner. The first prayer in the application was that the Condition No.6 imposed by the Court may be ordered to be deleted or in the alternative she may be specifically permitted to enter into the abovesaid property.

5. These two distinct alternative prayers were prayed for and the Court decided to grant first part of the prayer. I am afraid whether bail Court could have legally granted the alternative prayer in view of limited jurisdiction of the bail Court. So vide the impugned order, the trial Court has held that the petitioner is exempted from complying with the said Condition no.6 i.e. prohibitory condition. But while granting this relief the Court tried to make one clarification. This clarification is neither happily worded nor it is within the compass of powers vested with the bail Court and this has resulted into a jurisdictional error, is the basic argument of the Mr.Macwan for the petitioner because it nullifies the effect of the main prayer granted by the Court. It is true that any attempt to enter into the house by the present petitioner may cause disturbance in the area or at least in the family. But the fact remains that order of deletion of Condition no.6 has been challenged by the complainant or the State and the operative part of the order under challenge, if read then the same is found inconsistent to the main relief granted. So this type of order can be said to be have been passed without application of mind and assessing legal effect of it. If the first relief granted is found affected adversely by the subsequent portion of the order, then such mistake can be rectified by omitting such part of the order. This can be done exercising revisional jurisdiction.

6. The Court is not in agreement with the submission of Mr.Tirmizi that in view of the ratio of the decision of this Court in the case of ***Jagatsinh N.***

Soda and ors. v. Indravadan Ramniklal Mehta and anr., reported in 2003 (3) GLR 1849, this Court should not exercise revisional jurisdiction and the petitioner should be asked to approach the Court de-novo by filing a substantive petition under Article 227 of the Constitution of India. A grave procedural error has occurred and this can be said to be a jurisdictional error and such jurisdictional error can be rectified by the revisional Court.

7. In the present case while granting bail, the trial Court imposed one prohibitory condition and by subsequent order, the Court decided to delete that condition by a speaking order, then any element in subsequent order which impliedly introduces effect of inconsistency and reentry of original condition no.6, then that inconsistent part is required to be deleted and the order should be put to order so that the idea of deletion of condition no.6 can have proper legal effect.

8. In view of above observations, the Revision Application is hereby allowed and it is hereby clarified that the impugned order passed by the ld.Additional Sessions Judge is not disturbed so far deleting prohibitory condition no.6 of the bail order is concerned. The interpretation made by the ld.trial Judge immediately thereafter in the operative potion of the impugned order is only quashed and the same, shall have no effect.

9. This order shall not be viewed, seen or interpreted prejudicial to either party and their rights and contentions in the pending Civil proceedings.

10. Without entering into the merits of the submissions made before this Court in the larger interest of justice, it is hereby clarified that this order shall have an effect after 10 days from the date of signing the present order.

Rule is made absolute in above terms.

(C.K. Buch, J)

Aakar/21/7/05/